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COMMISSION ON HUMAN RIGHTS

Forty-seventh session

SUMMARY RECORD OF THE 50th MEETING
(SECOND PART*)

Held at the Palais des Nations, Geneva,
on Monday, 4 March 1991, at 3 p.m.

Chairman: Mr. BERNALES BALLESTEROS (Peru)

CONTENTS

Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its forty-second session (continued)

Measures to improve the situation and ensure the human rights and dignity of all migrant workers

Rights of persons belonging to national, ethnic, religious and linguistic minorities

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* The summary record of the first part of the meeting appears as document E/CN.4/1991/SR.50.

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REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-SECOND SESSION (agenda item 19) (continued) (E/CN.4/1991/2-E/CN.4/Sub.2/1990/59; E/CN.4/1991/47, 48, 50 and Add.1; E/CN.4/1991/NGO/13, 18; E/CN.4/Sub.2/1990/29 and Add.1, 42, 44, 46; E/CN.4/Sub.2/1990/SR.25; A/RES/45/164)

1. Mr. PREJEAN (International Indian Treaty Council) commended the Sub-Commission on its continuing good work despite the difficulties encountered by members in discharging their responsibilities.

2. Self-government and self-determination were the desire of most First Nations peoples, who had suffered from invasion, forced relocation, displacement, transmigrations and expropriation of lands and resources by late-arriving Governments. They therefore welcomed the fact that the Sub-Commission considered the ongoing study on treaties, agreements, and other constructive agreements concluded between States and indigenous peoples to be among its highest priorities. Since, as the United States Constitution stated, treaties were the supreme law of the land, it was imperative that they should be upheld. The unilateral abrogation by the United States of 371 ratified treaties with native nations did not nullify them. His organization disagreed with the view, expressed by the United States representative, that the Sub-Commission's studies on AIDS, the environment, cultural property of indigenous people and treaties between States and indigenous peoples were "extraneous". It hoped that the United States would recognize the significance of the next phase of the study on treaties, grant the Special Rapporteur every assistance in the United States and give his visit as much publicity as possible in order to provide the necessary community outreach.

3. Representatives of the Pro-Hawaiian Sovereignty Working Group (PASWG), the KA PAKAUKAU (a sovereign and independence coalition) and the International Indian Treaty Council, would like to encourage the special rapporteurs to witness and/or participate in a tribunal to be held in Hawaii in January 1993 to consider the armed invasion and subsequent occupation of their homeland by the United States.

4. In conclusion, his organization commended Mrs. Daes on her good work on behalf of the indigenous peoples. It urged the Sub-Commission, as the conscience of the Commission on Human Rights, to persevere in its task.

5. Mr. TURK (Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities) said that the Commission's discussion on the work of the Sub-Commission had been constructive and helpful and that he would inform the Sub-Commission fully of the concerns and views of its members. The Sub-Commission was and always had been, first, a subsidiary body of the Commission on Human Rights, and second, a body of independent experts. Those two features created a productive tension which led to the success of its work.

6. Regarding standard-setting, which had been a subject of many comments by members, he welcomed the fact that the draft declaration on the protection of all persons from enforced or involuntary disappearances had gained widespread support during the discussion, and he hoped that it would be submitted for further consideration and adoption. The draft universal declaration of indigenous rights had been the subject of a rich debate and helpful comments.

The presence of the Chairman of the Sub-Commission's Working Group on Indigenous Populations during much of the debate had been helpful, and her leadership would be needed in further contacts with Governments and in organizing the future work of the Working Group.

7. Regarding the right to leave and to return to one's country, he agreed that the adoption of the revised draft declaration on freedom and non-discrimination in respect of the right of everyone to leave any country, including his own, and to return to his country was long overdue. The delay had been partly due to changes in the composition of the Sub-Commission. In any event, the time was ripe for its conclusion.

8. A number of critical remarks had been made about the number of studies sponsored by the Sub-Commission, a list of which appeared in annex IV of the report (E/CN.4/1991/2). He wished to point out that some of those studies were only working papers or reports without financial implications. However, as part of its efforts to reduce the number of studies, the Sub-Commission had already begun to prepare feasibility studies before embarking on a serious study, and that practice would be continued. There was indeed a need to stress the early completion of Sub-Commission studies and better organization of its debates. Regarding the latter, he agreed with the introduction of a system whereby selected members would comment in detail on a study. He noted that, despite the fact that the progress report on the solution of problems involving minorities (E/CN.4/Sub.2/1990/46) came under item 18 of the Sub-Commission's agenda, it had been one of the earliest studies to be taken up at the forty-second session. An agenda item number in no way indicated priority.

9. Regarding the procedure for examining communications under Council resolution 1503 (XLVIII), he welcomed the support expressed in the Commission for the procedural decisions adopted at the Sub-Commission's forty-second session. There was a general feeling that 12 weeks was an appropriate amount of time for States to prepare their replies, and he was certain that the decisions would further stimulate co-operation from States in the framework of the 1503 procedure.

10. The remarks on organization of work would be of value to the Working Group of the Sub-Commission established the previous year. He stressed that nothing was final and that the idea of global reports, suggested in reference to an earlier Commission resolution, was tentative. As some members had said, the approach of developing non-judgemental forms of involvement in situations should be tried. The Government of Canada had made a constructive offer in that connection the previous year, and he hoped that others would follow suit.

11. It was also true that the Sub-Commission, in organizing its work, should spare no effort to prevent politicization and duplication of work and should use its time more expeditiously. That did not mean it should reduce the number of its experts but that it should prevent political considerations from prevailing in its work. Two points should be made in that context: first, politicization was usually introduced by observers and much more restraint was needed in the discussions; second, there should be greater vigour in addressing human rights violations, for which the Sub-Commission often needed more solid evidence rather than unreliable allegations. He noted that informal consultations were currently taking place with a view to a more effective organization of work.

12. As the representative of the United Kingdom had said, the relationship between the Commission and the Sub-Commission was one of partnership. Most of the remarks made were not criticisms, but welcome suggestions, which would be used to advantage at the Sub-Commission's next session.

13. Miss ABAS (Indonesia), speaking in exercise of the right of reply, said that several members had referred to East Timor, in regard to self-determination, allegations of human rights violations and access by non-governmental organizations to that province. She would not waste the Commission's precious time by speaking on those points, which her delegation had amply clarified in its statements under various agenda items.

14. The CHAIRMAN said that the Commission had concluded its consideration of agenda item 19.

MEASURES TO IMPROVE THE SITUATION AND ENSURE THE HUMAN RIGHTS AND DIGNITY OF ALL MIGRANT WORKERS (agenda item 13) (A/C.3/44/4; A/C.3/45/1; A/RES/45/158)

15. Mr. NYAMEKYE (Deputy Director, Centre for Human Rights) introducing the agenda item, said that the United Nations had been paying close attention to the vulnerable situation of migrant workers and their families for more than two decades. In 1972, the Economic and Social Council had condemned the abuses resulting from the inequalities and discrimination suffered by migrant workers, and called upon the Governments concerned to punish those responsible and to adopt measures to prevent abuses. It had requested the Commission on Human Rights to examine the question and propose appropriate recommendations to help it take further decisions. Furthermore, in response to a recommendation made by the Commission in 1974, the Sub-Commission on Prevention of Discrimination and Protection of Minorities had entrusted Mrs. Warzazi with preparing a study on the exploitation of labour through illicit and clandestine trafficking. That study had been finalized and transmitted to the Commission in 1976 and contained numerous recommendations on the subject.

16. Migration was much more than mere movement of individuals from their homeland to a new horizon with hopes for a better future. It was in many ways a reflection of the imbalances and imperfections of the world and should be viewed against the wider background of social and economic development which required global action and global co-operation at the level of the international community.

17. Migrant workers faced fundamental problems of human dignity: working far from home, in a different culture and often faced with language difficulties, they had difficulty in preserving their cultural and spiritual values and in particular in transmitting them to their children. They might also find themselves discriminated against and exploited, with the normal procedures for the protection of human rights less than responsive to their needs. They represented one of the particularly vulnerable groups whose concerns required the adoption of specific measures, as recent developments in international law had indicated.

18. Thanks to painstaking efforts in the past 10 years, the General Assembly, by its resolution 45/158 of 18 December 1990, had adopted and opened for signature, ratification and accession the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,

called upon all Member States to consider signing and ratifying or acceding to the Convention as a matter of priority, and expressed the hope that it would come into force at an early date. In general, the Convention was a global attempt to codify the rights of all migrant workers and their family members in one single instrument. It broke new ground by including a universal definition of migrant workers and of the special categories of migrant workers, while including new categories not previously covered by international instruments.

19. Unlike other instruments in the field, the Convention applied the principle of equal treatment with the nationals of the State of employment rather than providing a mere minimum standards approach. It established an appropriate balance between a set of fundamental rights applicable to all migrant workers, irrespective of their legal status, and a set of sanctions against the exploitation of undocumented workers, and it set prerequisites for preventing illicit trafficking of clandestine migrant workers. The Convention was an attempt to provide a framework for further international co-operation aimed at promoting sound conditions for migration.

20. The Convention provided for the establishment of a Committee to monitor its implementation as well as optional procedures for dealing with complaints from individuals and States.

21. The protection of migrant workers was of special significance within the programme of action of the Second Decade to Combat Racism and Racial Discrimination, under which an important seminar had taken place in Athens in September 1989. That seminar had dealt with the cultural dialogue between the countries of origin and the host countries of migrant workers, and its report contained many relevant conclusions and recommendations. Pursuant to the programme of action for the Second Decade, the Secretary-General was carrying out a study on the effects of racial discrimination in the field of education, training and employment as it affected the children of minorities, in particular those of migrant workers, and a study of the extent to which children of migrant workers were enabled to receive education in their mother tongue.

22. Mr. HELLER (Mexico) said that the adoption, without a vote, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families represented a step forward in United Nations efforts to combat discrimination and to promote human dignity. Despite the existence of other international instruments on fundamental freedoms, there had been a need to recognize the special and exceptional situation of millions of human beings who were forced to leave their countries of origin in search of better living conditions.

23. Migration had taken on new forms and dimensions after the Second World War; the international dimensions of migration reflected the deep imbalance between North and South, the unequal distribution of wealth and the social injustice prevailing in various societies.

24. While millions of persons had to leave their countries of origin because of the lack of opportunities for a better life, other countries needed foreign workers to help their economies grow. Migration therefore served a purpose for both countries of origin and countries of destination. The situations that had arisen in the last decade had confirmed the need for an International

Convention, since nowadays nearly all States were affected by the phenomenon of increasing migration in all regions. The human rights situation of migrant workers was weak in many countries. The dramatic changes taking place in the international scene were giving rise to new and complex social problems and new flows of migration. Recent events in the Gulf had underscored the tragedy of hundreds of thousands of migrant workers, from a variety of countries, who were the innocent victims of an international conflict. It was clear that migration would be a priority issue in the years ahead.

25. Against that background, it had not been easy to prepare the Convention, which had to take into account, inter alia, the different situations that existed throughout the world, the migration policies of the countries of origin and host countries and the national interests of all States. Nevertheless, after intensive dialogue, a basic agreement had been reached that the international community was responsible for protecting the rights of migrant workers and their families, whatever the situation of a particular country with respect to migration. The text adopted represented the first global effort to codify the rights of migrant workers and their families in a single instrument and provided a general framework that could be used as a point of reference for bilateral and multilateral treaties.

26. The Convention included a universal definition of the migrant worker, encompassing specific categories not hitherto covered in other international instruments. It also explicitly recognized the right of each State to define its migration policy in the light of its national interest. The most significant aspect of the Convention was the fact that it granted protection to all migrant workers, regular and irregular. Due to increasingly restrictive migration policies and the change in economic circumstances, unlawful or undocumented migration had become a major problem. All States, whether countries of origin or host countries, shared responsibility for protecting the human rights of migrant workers. Thus, the Convention established criteria for combating the illegal or clandestine movement of migrant workers as well as measures to impose effective sanctions on persons, groups or entities which used violence, threats or intimidation against migrant workers or members of their family in an irregular situation.

27. The Convention, therefore, would provide the Member States of the United Nations with a new multilateral instrument for promoting the human rights of migrant workers and protecting them in specific situations. His delegation urged all States to consider signing and ratifying the International Convention as soon as possible.

28. Mrs. RADIC (Yugoslavia) said that her delegation had participated in the Working Group on the Drafting of an International Convention, from its inception, guided by its general concern for human rights issues and the need to establish a framework for the protection of migrant workers, of whom there were several hundred thousand from Yugoslavia, mostly in other European countries. The Convention was timely and much needed and Governments should proceed to ratify it speedily. The competent Yugoslav organs would soon begin the ratification procedure.

29. Her delegation was a sponsor of draft resolution E/CN.4/1991/L.58 which it hoped would be approved by consensus.

30. Mr. ATMANI (Morocco) said that his delegation had every reason to welcome the adoption by the General Assembly of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, since it was Morocco that had drawn attention to the alarming situation of migrant workers in the context of the discussions on racism in 1972.

31. His delegation reaffirmed that the insecurity of the migrant worker and the lack of respect for his national identity and religious beliefs were factors that made for constraint and rejection. It was impossible for migrant workers to live in an environment of justice, peace and equality with the constant threat of refoulement, expulsion and the denial of dignity. Even workers in regular situations could hardly protest against conditions of exploitation when they could be sent back to their countries at any time. In addition, xenophobia and racism, encouraged by electoral campaigns that spread hatred, often troubled relations between migrant workers and their colleagues and supervisors.

32. It was understandable that the European countries should take precautions against the galloping illegal immigration, particularly in view of the imbalance in the current international economic order and the expansion of indebtedness. Migrant workers must, nevertheless, be provided as far as possible with safeguards for themselves and their families.

33. His delegation hoped that a large number of States would soon accede to the International Convention, which strengthened the existing rules in the area of protection and promotion of the human rights of a vulnerable group.

34. Mr. ESPEJO (Philippines) said that his delegation welcomed the adoption by the General Assembly of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and urged its ratification by as many countries as possible within the shortest possible time.

35. There were approximately 30 million migrant workers in all countries at the present time. Of that number, approximately 1 million were Filipinos. It was expected that migration for employment in even greater numbers would continue for the following reasons. First, as the populations of developing countries increased amidst adverse economic conditions and as the populations of developed countries stagnated in comparison, the nationals of developing countries would continue to be attracted by job opportunities in the developed countries. Secondly, there was increasing acceptance of the fact that migrant workers contributed greatly to the enhancement of the host country's productive capacity. Thirdly, as borne out by recent events in the Gulf, there was in developed countries at the present time a vast reserve of goodwill. As a result of the generous contributions of many developed countries and the dedicated efforts of the United Nations, its agencies and other international bodies, non-governmental organizations and individuals, hundreds of thousands of migrant workers in Iraq and Kuwait were being repatriated. At least 40,000 of them were Filipinos. His delegation expressed its gratitude to many countries throughout the world, United Nations bodies, and non-governmental and intergovernmental organizations, for their contributions and spirit of humanitarianism. It hoped that the momentum of that goodwill and spirit of humanitarianism displayed in time of crisis and war would continue and be further enhanced in time of peace, particularly in respect of migrant workers.

36. The time and effort spent in drafting the Convention reflected the increasing complexity of the phenomenon of migration. In view of the number of human beings involved, both actual and potential, migration had far-reaching economic, social, political, ecological and demographic aspects. Above all, however, it had a human dimension and his delegation believed that the Convention squarely and adequat :y provided the legal framework to address that human dimension.

37. The Convention expressly stated that basic human rights as the right to life, freedom of thought, conscience or religion, freedom of expression, privacy, and so on applied to all migrant workers and their families regardless of their status in the host country and thus reaffirmed the basic fact that human rights knew no territorial boundaries and that the rights expressed in the Universal Declaration of Human Rights were indeed universal.

38. One of the Convention's most innovative features was the right not to be expelled except for reasons defined in the national legislation and, in no case, for the purpose of depriving a migrant worker or a member of his or her family of the rights arising out of the authorization of residence and the work permit. The provisions intended to preserve the solidarity of the family and promote the welfare of children were of particular significance. They encouraged the reunification of migrant workers with their families and provided for the right of children of migrant workers to education, medical care and other basic services. Another important innovation was the recognition, under certain conditions, of the competence of individuals to submit complaints against a State party to the Convention.

39. His delegation was proud to be a sponsor of draft resolution E/CN.4/1991/L.58. However, the rights of a migrant worker enumerated under the Convention would be hollow if they could not be enforced. It was certainly the duty of each Government to do its best to protect the interests of its own nationals wherever they might be. In most cases, however, the migrant worker was from a developing country fleeing from poverty and seeking a better life in the more developed economies. That migration pattern revealed serious limitations on the part of Governments of developing countries with very limited and dwindling resources in discharging their obligations towards their nationals. Furthermore, the Government of a developing country sometimes had to carefully balance the protection of its nationals with the maintenance of close co-operation and understanding with host countries.

40. On the other hand, there were many instances where the Commission as well as non-governmental organizations could act more freely and even more effectively than Governments and therefore play an important role in the enforcement of the rights of the migrant worker and his family. Then and only then could it truly be said that the human dimension of the phenomenon of migration had been adequately addressed in all respects.

41. Mr. DA CRUZ (Indonesia) said that the international effort to extend the protection of human rights to all men, women and children had been significantly strengthened in the past year with the adoption of the Convention on the Rights of the Child which sought to protect the fundamental human rights of the world's most vulnerable members, its children, and the International Convention on the Protection of All Migrant Workers and Members of Their Families which extended the protection to a transient group, often overlooked by society, but whose contribution to the development process was

regarded as substantial. Their adoption by consensus had shown that the activities undertaken in the field of human rights by the international community were part of an ongoing effort that was responsive to the growing needs of humanity. The Convention on Migrant Workers sought to extend protection to a group of workers which was often undocumented and working illegally or without legal residence and whose particular situation had all too often made them an easy prey for exploitation and abuse. They were hard-working men and women, and sometimes even children, who had beyond any doubt greatly contributed to the dynamism of many economies, and had been a significant factor in generating wealth and prosperity. It was therefore especially tragic that they had reaped so little profit for their labour and received so little gratitude or respect.

42. Regardless of the contribution which migrant workers had made in so many sectors of the economy, it could not be overemphasized that all people were entitled to their dignity as human beings and to have their human rights respected and protected. The Convention sought to ensure that protection by focusing on the particular nature of their situation.

43. His Government had established close co-operation with the Workers' Union and the Association of Employers in the protection of Indonesian migrant workers through an Interstate Labour Agency (AKAN). The many functions of AKAN included supervision of the recruitment, training and placement process of Indonesian migrant workers. It closely monitored their well-being throughout their assignment. His Government had also concluded a number of bilateral agreements with several countries with the primary aim of protecting Indonesian workers abroad.

44. In his delegation's view, the adoption of the Convention would not only complement existing bilateral arrangements but would also provide an umbrella for further international co-operation in protecting migrant workers. In that regard, Indonesia recognized the important role of the International Labour Organisation in promoting and implementing the Convention in many parts of the world.

45. Mrs. GABR (Observer for Egypt) paid tribute to the efforts made for more than 10 years by the Working Group on the Drafting of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Her delegation considered that the Convention constituted a valuable addition to the existing international instruments. The Convention was concerned with all aspects of the daily life of migrant workers. It sought to ensure respect for their right to maintain their own social and cultural identity while stressing their other material and financial rights.

46. Modern history had shown that migrant workers contributed to economic recovery but that at the same time they were the first victims of social, economic, political and military crises. In that connection, she said that the Gulf crisis had threatened the life and security of hundreds of thousands of Egyptian migrant workers who constituted 45 per cent of the total number of workers in the area. A report to the ILO Governing Body on "Migrant Workers Affected by the Gulf Crisis" (GB.249/15/7) issued on 15 January 1991, demonstrated that current migration practices were not in keeping with international labour standards. The time had come to bring the employment conditions of migrant workers into line with ILO standards in both the country of origin and the host country.

47. In view of the dimensions assumed by the phenomenon of migrant workers in the modern world, co-operation was needed, based on the provisions laid down in international instruments, between the country of origin and the host country in order to safeguard the mutual interests of all parties concerned. In that connection, the new Convention was being studied with great interest in her country and her delegation hoped that other Member States would give the Convention similar attention.

48. Mr. KIRKYACHARIAN (Movement Against Racism and for Friendship Among Peoples) said that the problem of migrant workers had long been considered from the exclusive standpoint of Western Europe or the United States. However, recent events in the Gulf or South-East Asia amply demonstrated that the problem also arose elsewhere. In varying degrees, the problems remained the same everywhere: considerable disparities in treatment from the standpoint of wages, education, training, housing and social rights frequently resulted in what could be called ghettos and pockets of underdevelopment. Another aspect of the problem was the development of racism. Racism was, of course, rooted in "natural" i.e. historical prejudices, but it did not develop spontaneously; social and political forces contrived to make use of its potentialities.

49. A very serious problem that was emerging in the context of the Europe of 1992 was the legal constitution of a structure within which 10 million persons would be enclosed in a state of non-citizenship. The problem would be all the more serious since those persons would be easily recognizable by their physical appearance. In the "Community Charter of Workers' Fundamental Social Rights", which could be considered as the corner-stone of the Europe of 1992 from the social standpoint, a clear distinction was made between migrant workers from EEC countries and other migrant workers, for whom no provision was made at all. Therefore, the Europe of tomorrow might practise a kind of underground and institutionalized racism.

50. The European States, including France, defended themselves against those charges and claimed that they were implementing policies designed to counteract all those negative aspects. It was true that nearly all had developed integration policy programmes.

51. Those programmes differed considerably and referred to different concepts. It was clear, for example, that the post-colonial and neo-colonial dependency relationship had different effects in France, the United Kingdom and the Netherlands, on the one hand, and Germany on the other. There was also the question of jus soli and jus sanguinis, which was treated differently in the various countries.

52. In countries like France, the historical model of integration was that of assimilation but, like the British model, it had to cope with the inefficient and obsolescent educational and training institutions. In fact, in both countries, a considerable number of young persons born of immigrant parents enjoyed civil equality and full citizenship in theory but were excluded from such equality in practice. They were mistrusted by part of the "indigenous " population, which regarded them as "immigrants". Whereas anti-racist movements campaigned for the right of vote of all residents, a considerable number enjoyed that right but did not use it thereby substantiating the belief that they could not be assimilated. Where the persons concerned came from the Maghreb, Turkey and Pakistan, the myth of the incompatibility of Islam with Western culture was further intensified.

53. The other current model was that of community coexistence. It would be easily seen that such a model maintained the idea of a radical difference between groups and could also result in paternalist as well as xenophobic policies.

54. The European countries and the community taken as a whole seemed to adjust quite well, despite their denials, to the existence of a priori areas of inequality. Despite the various administrative measures taken, so-called clandestine immigration had not decreased, and seemed unlikely to stop, since it appeared to meet the needs of certain economic sectors.

55. The Gulf war had given rise to and would sustain deep resentment in the countries that exported manpower, since, wrongly or rightly, the peoples of those countries considered that the industrialized nations were seeking to dominate the world. Many factors showed that that resentment was largely shared by the young people born into immigrant families in France whose imaginary identification with the intifada was the frame of reference for expressing absolute revolt and despair.

56. On the other hand, there was no doubt that the extreme right-wing excelled at stirring up fear of Arabs and hatred of Jews.

57. In such a situation, it was clear that the European institutions must revise the "social charter", which made no reference to the fundamental rights of migrant workers from third countries, and equally clear that a truly egalitarian policy should be developed for the post-1992 Europe. In the meantime, the European member countries would have to implement parallel training, housing, trade union rights and social rights policies in general. In conclusion, all EEC countries should adopt the principle of granting the right of vote to foreign residents, without distinction as to origin, in the case of local elections.

58. Mr. ROBEL (World Confederation of Labour) welcomed the adoption in December 1990 by the General Assembly of the resolution on the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. He paid a tribute to all those who had contributed to the elaboration of the Convention, which had required several years of studies and discussions.

59. International organizations such as the International Labour Organisation and United Nations Educational, Scientific and Cultural Organization had already adopted instruments relating to questions of work and education affecting migrants. But, in view of the evolution of international migration, it had also been necessary to prepare an international instrument covering all the political, civil, cultural, economic and social aspects of the rights of migrant workers.

60. His organization welcomed in particular Part III of the Convention, which dealt with trade union freedoms and rights of migrant workers and members of their families with a view to protecting their economic, social, cultural and other interests.

61. The phenomenon of migration was not new; during the era of slavery and colonization, millions of "indigenous" people had been taken to various parts of the world to work in plantations, mines and work sites. Industrialization had also given rise to major migration flows.

62. Countries devastated by wars or in the process of industrialization also needed abundant and inexpensive manpower. Millions of workers had been obliged to emigrate because, in their countries of origin, the national economic and social policies had been incapable of putting an end to unemployment and poverty; the trade, economic and financial relations between the North and South were unfair; violations of human rights were frequent and democracy non-existent; and the decadence of some social and political systems had been followed by the sudden adoption of a liberal economy. According to conservative estimates, there were some 30 million migrant workers in the world, most of whom had taken up residence in the host countries.

63. The most privileged migrant workers were those who could move about freely. Highly qualified migrant workers were also in a privileged situation. However, most migrant workers were confined to sectors where they were badly paid and had to perform difficult and even dangerous work. Consequently, their living conditions were poor and, frequently, because of their origin, culture, religion and colour, they had difficulty in obtaining certain rights necessary for integration.

64. Because of the deplorable situation of migrant workers and members of their families in various countries and areas, the international community had elaborated a convention on the protection of their rights. The States Members of the United Nations must, however, be prepared to ratify and to implement the Convention. It was also of the greatest importance that they should adopt national legislation in accordance with the spirit and letter of the Convention. There should also be a policy aimed at promoting development, combating poverty and establishing a new economic and social order that generated justice thereby eliminating exploitation, inequality, wars, and further migratory flows.

65. His organization regretted the fact that so few countries had ratified ILO Conventions Nos. 97 and 14 concerning migrant workers, and it urged all States to ratify the ILO Conventions and the new Convention.

66. It was to be hoped that Europe would find an equitable solution for all non-EEC migrant workers despite the fact that the Treaty of Rome and the Single European Act of 1985 contained no provision in their regard.

67. His organization also hoped that ways and means would be found to resolve the considerable and increasingly acute problem of migration from Eastern Europe.

68. Mr. RYDER (International Confederation of Free Trade Unions - ICFTU) said that his organization welcomed the adoption by the General Assembly in December 1990 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families after some 10 years of detailed preparatory work. The active participation of the International Labour Organisation had helped to ensure that the Convention was consistent with existing labour standards. Attention must now be turned to the ratification and monitoring of the Convention, the terms of which offered an opportunity for the establishment of effective supervisory mechanisms.

69. One important objective of the Convention was to guarantee the fundamental protections enshrined in its Part III to all migrant workers - legal or illegal - and their families. However, his organization regretted that the further protections outlined in Part IV, including the right to form a trade union, applied only to legal migrants.

70. A further objective of the Convention was to discourage the illegal employment of migrants, which was often synonymous with exploitation and deprivation, even in countries with a generally high standard of living. But it would also be necessary to improve the economic and social conditions which made people leave their own countries and seek work elsewhere.

71. The Convention had been adopted at a particularly appropriate moment, given the current developments in the world. In Europe, the integration of the countries of the European Community and the move towards a single market had obvious implications for non-community nationals, as well as for community nationals, who could be expected to move abroad to work in increasing numbers. In addition, the changes in Central and Eastern Europe meant that many people were likely to leave those countries to seek work. At present, it was impossible to estimate accurately the numbers of workers who might be involved. The main priority was to avoid any uncontrolled population movements. Migrant workers who had been encouraged to move to countries in Central and Eastern Europe were already likely to be repatriated because of the growing unemployment rate in those countries. His organization was particularly concerned about the position of Vietnamese migrant workers in Bulgaria and the Czech and Slovak Federal Republic, who now faced repatriation in conditions of uncertainty.

72. The Gulf crisis had affected large numbers of migrant workers. In August 1990, there had been an estimated 2.8 million migrant workers and their dependants in Iraq and Kuwait; over 1 million of them were Egyptian nationals. In the months following Iraq's invasion of Kuwait, many of those workers had managed to return to their own countries, but they had lost their possessions, savings and social security rights, and the wages they were owed had still not been paid. A major international effort would be needed to ensure that those workers received what was rightfully theirs and to help them to find work in their own countries, which already faced severe difficulties.

73. Other migrant workers had been prevented from leaving Iraq and, in some cases, they had been drafted into the Iraqi armed forces or made to work against their will. His organization had received reliable reports of executions of Egyptian workers who had resisted enlistment.

74. Violations of the basic human rights of migrant workers had not been confined to Iraq and occupied Kuwait. In countries such as Saudi Arabia, the fact that migrant workers' passports were kept by their employers meant that many of them had been unable to leave the country at the outbreak of the Gulf crisis. On the other hand, some 350,000 Yemeni workers had been effectively expelled from Saudi Arabia.

75. The process of reconstruction in the Gulf would be carried out by migrants to a large extent. The United Nations must not allow the continued imposition of restrictions such as the absolute prohibition on trade unions in Saudi Arabia, Bahrain and the United Arab Emirates, or the five-year residence requirement for migrant workers in Kuwait who wished to join a trade union.

No country should be allowed to cite selectively some principles of the United Nations as its justification for military or other action, while choosing to ignore others or apply them differently to its own nationals and to migrant workers, who made such a contribution to economic and social development.

76. The CHAIRMAN said that the Commission had concluded its consideration of agenda item 13.

RIGHTS OF PERSONS BELONGING TO NATIONAL, ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES (agenda item 20) (E/CN.4/1991/52, Add.1 and 2; E/CN.4/1991/53; E/CN.4/1991/NGO/9; E/CN.4/Sub.2/1990/46; A/46/59-E/1991/7; A/46/71-E/1991/9)

77. Ms. ILIC (Yugoslavia), Chairman-Rapporteur of the Working Group, introducing the report of the open-ended Working Group on the rights of persons belonging to national, ethnic, religious and linguistic minorities (E/CN.4/1991/53), said that the Group had held 11 meetings at which it had continued the consideration of a draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities. It had discussed two important issues affecting the draft declaration, i.e. the definition of the beneficiaries and the question of individual and/or collective rights.

78. With regard to the definition of the beneficiaries, the view had been expressed that since other human rights instruments did not contain a definition of the term "minority", the draft declaration did not necessarily have to contain such a definition. It had been pointed out that, through the use of the adjectives national, ethnic, religious and linguistic before the word "minorities", the draft already specified what scope it would have and whom it was intended to benefit.

79. With regard to individual and/or collective rights, the view had been expressed that the rights of individuals, including persons belonging to minorities, were of fundamental importance and should be emphasized in the draft declaration.

80. The protection of all individuals against discrimination and the creation of a society in which they could freely enjoy their rights and freedoms was said to be the very essence of the drafting exercise. For that reason, the phrase "persons belonging to" should be retained in the text of the draft declaration, wherever possible.

81. The opinion had also been expressed that the groups as such must be protected in order to achieve the effective protection of their individual members.

82. At the conclusion of the discussion, it had been stated that the phrase "between individual and collective rights" was not an absolute one, but that it would in the future depend on the contents of the rights, freedoms and duties spelled out in each article of the draft declaration. It was considered likely, following an examination of the contents of those articles, that various approaches could be applied in a practical and balanced manner.

83. With regard to the preamble, the Working Group had introduced two new elements. One was that the United Nations had an important role to play. The second was the recognition of the role of intergovernmental and non-governmental organizations.

84. On 28 February 1991, the Working Group had adopted its report unanimously. She hoped that the Commission would follow suit.

85. Mr. SCHERK (Austria) said that ethnic minorities enriched the culture of the States in which they lived and provided valuable links between neighbouring States. Their right to recognition and their right to preserve and develop their cultural identity in their own way should be accepted by all States, and they should receive adequate public resources to enable them to do so. In particular, they must have the right to use their own language, especially in their dealings with public authorities. Members of an ethnic minority should suffer no disadvantage if they exercised - or chose not to exercise - the rights enjoyed by members of that group. The rights of members of minority groups could not be implemented without a continuous dialogue with their representatives and the promotion of understanding for minority issues among the majority population.

86. A number of measures promoting the rights of minority groups had been adopted in the European region. In June 1990, the Conference on Security and Co-operation in Europe (CSCE) had agreed on a series of principles concerning national minorities, including measures to safeguard their rights without discrimination and in full equality before the law. In the Charter of Paris for a New Europe, adopted in November 1990, the CSCE States had called for the protection and promotion of the ethnic, cultural, linguistic and religious identity of national minorities.

87. Efforts were being made within the Council of Europe to draw up legally binding instruments for the protection of minorities. A European charter of regional minority languages was being drawn up by an expert committee and should be adopted soon. The European Commission for Democracy Through Law had submitted a draft convention on the protection of minorities, and the Parliamentary Assembly, acting on an Austrian initiative, had recently adopted a recommendation containing similar suggestions.

88. Many of the country situations which the Commission had considered under agenda item 12 had involved minority groups; that showed the potential for conflict arising from minority issues, both within States and in international relations. Conflicts involving minorities in Europe had taken on new prominence in recent years, but there were striking examples in other continents, as well. The Kurdish people, scattered over several States of the Middle East, had been struggling for years to preserve its identity and assert its rights, which had led to tensions both within and between those States and had been the cause of serious human rights violations. He hoped that the forthcoming efforts to restore peace to the region would also bring a solution for that complex issue.

89. Turning to the situation of minority groups in his own country, he said that the 1946 agreement between Austria and Italy which had resolved the problem of the German-speaking minority in South Tyrol, was a good example of the peaceful resolution of a minority issue which had contributed to friendly relations between neighbouring countries. The situation of ethnic minorities

in Austria had been regulated by a 1976 law which made provision for ethnic advisory councils, financial assistance for ethnic groups and the use of minority languages when dealing with public authorities. The various federal Länder passed their own laws concerning education in minority languages. The Government carried on a continuing dialogue with representatives of ethnic groups.

90. Austria supported all initiatives for new standards relating to the protection of minorities, because it felt that a State should involve minority groups in the affairs of the country where they lived, rather than marginalizing them or denying that they existed at all. Article 27 of the International Covenant on Civil and Political Rights guaranteed members of minority groups the right to enjoy their own culture, to profess and practise their own religion and to use their own language. In a number of decisions on individual communications under the Optional Protocol to the Covenant, the Human Rights Committee had further developed the meaning of those important provisions; the Committee's case law should be taken into account in any future work to draw up new standards.

91. The adoption by States of principles on the protection of minority groups would do a great deal to increase the promotion of human rights within the framework of the United Nations. The adoption of the draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities, which had been under consideration by an open-ended Working Group of the Commission for more than a decade, would be particularly valuable. He hoped that the declaration, now undergoing its second reading, really would define the specific rights of persons belonging to minorities.

92. Mr. CROOK (United States of America) said that his delegation had taken an active part in the Working Group's activities. It urged the support and involvement of other Governments in order to bring the work on the draft declaration to an early and constructive conclusion. The agenda item under discussion raised key human rights values, and it deserved thoughtful and thorough consideration by the Commission. It would also be entirely in order for the Sub-Commission on Prevention of Discrimination and Protection of Minorities to devote an entire session to work focusing on the protection of minorities.

93. Conflict and tension related to minority issues was prevalent in many countries throughout the world. Nevertheless, his delegation could see one common approach which would greatly lessen the extent of such conflicts and the violence which accompanied them: namely, for all Governments to observe basic civil and political rights fully and conscientiously. The rights often denied to persons belonging to minorities - the right to be safe, the right to influence Governments through real democratic processes, the right to carry on religious, cultural and family life free from State interference and to be treated equally before the law - were precisely those rights which were vital for them. Members of minority groups were particularly vulnerable to abuse or discrimination by the majority, or by the instruments of Government which the majority controlled. Such abuse bred conflict between the groups which, in its turn, bred violence. A scrupulous observance of the basic civil and political rights of all members of society would enable members of minority groups to enrich and enliven the societies in which they lived, to the benefit of all.

94. Mr. ZHAN Daode (China) said that his country had participated in the open-ended Working Group, and hoped that the draft declaration would soon be ready for adoption. China also supported the work of the Sub-Commission Special Rapporteur on the ways and means of facilitating the peaceful and constructive solution of problems involving minorities. He would like to inform the Commission of some of China's experience in minority issues.

95. In China, 56 nationalities had lived together in a united country for several thousand years, establishing an unbreakable bond and showing a remarkable spirit of co-operation. The misery and suffering caused by imperialist aggression in the past 200 years had merely brought them closer together.

96. Following the creation of the People's Republic of China in 1949, the central Government had drawn up a nationalities policy with three major aspects. Firstly, all nationalities, ranging from the Han Chinese, who numbered 1.04 billion people, to the Luoba people, who numbered only 2,300, enjoyed complete equality and mutual respect. All nationalities were equal before the law and had equal rights to participate in State affairs. For instance, in 1987, at the seventh session of the National People's Congress, the supreme organ of power in China, representatives of minority groups had accounted for 15 per cent of deputies, although minority groups accounted for only 8 per cent of the population as a whole. Of the 19 chairmen and vice-chairmen of the Standing Committee of the NPC, six - or approximately 30 per cent - were from minority nationalities. Officials from minority nationalities were also employed in central and local government, particularly in the country's autonomous regions.

97. Secondly, minority groups had been assigned their own territory, in which they enjoyed considerable autonomy. At present, there were 5 autonomous regions, 30 autonomous prefectures and 124 autonomous counties, covering in all 64.5 per cent of the territory of China. There were also 1,500 nationality townships, which had been established for minority groups which were scattered around a particular region. In all the autonomous areas, minority groups were responsible for their own political, economic and cultural affairs.

98. Thirdly, the Government's policies guaranteed prosperity for all ethnic groups. In the past, owing to the uneven social, economic and cultural development of the country, minority groups living in remote areas had been disadvantaged. The Government's policy sought to help minority groups to achieve economic and cultural development and prosperity, in accordance with their aspirations and demands and the overall interests of the country. After all, autonomous areas accounted for more than half of the country's territory; if progress there was slow, it would be impossible to implement the country's modernization programme and any differences in prosperity between different ethnic groups would lead to dissatisfaction and social unrest.

99. The Chinese Government encouraged a spirit of self-reliance among all ethnic groups. However, there were also preferential policies for some minority groups, which allowed them to use their spirit and ability to promote their own development. For instance, in the Tibet Autonomous Region, the local government was allowed to retain all its foreign exchange earnings for local use. Households enjoyed their own land rights, and individuals had the right to make independent management decisions. The region was exempt from agricultural and animal husbandry taxes.

100. The Chinese Government provided financial, material and human assistance for the development of minority areas, including the construction of a number of modern enterprises to encourage economic growth. The State provided large financial subsidies; for example, 98 per cent of Tibet's annual expenditure came from the resources provided by the central Government. There were practical measures to meet minority groups' basic needs for food and clothing and help them to improve their lives, and better developed areas were encouraged to co-operate with poorer ones. For instance, the 43 modern projects completed in Tibet in recent years had been the result of co-operation with other areas of China.

101. The Government had adopted special policies in the fields of health, education, science and technology and culture. For example, the Tibetan language was used not only in Tibet, but also as one of the working languages of the NPC and the Chinese People's Political Consultative Conference. Tibetan ancient writings, including Buddhist scriptures, had been published, and the Government had recently allocated the sum of Renminbi 35 million yuan for the reconstruction of the famous Potala Palace in Lhasa. Modern hospitals using Tibetan medicine had been built in Lhasa and other areas. Research institutes for Tibetan studies had been established all over the country, with many scholars of Tibetan nationality.

102. The religious beliefs of national minorities were respected and protected: in Tibet, there were 1,400 temples, with over 34,000 monks and nuns. People of all nationalities enjoyed freedom of religious belief and could pursue religious activities in their communities.

103. The overwhelming majority of China's minority nationalities felt that their rights and development were guaranteed, and were full of hope and confidence about the future of their country. The spirit of unity among all the nationalities of China was more steadfast than ever.

104. Mr. ESPEJO (Philippines) said that his country attached special importance to the promotion and protection of minority rights, which had been enshrined in the 1987 Constitution for the first time. The part of the Constitution dealing with local government had made provision for the establishment of two autonomous regions for the principal minority groups. After a plebiscite in 1989, four provinces and two cities in Muslim Mindanao had voted to become autonomous. The other vote, in the Cordillera region, had not shown enough popular support for the establishment of an autonomous region. On 8 June 1989, the Philippine Congress had passed a law providing for the future establishment of an autonomous region in Muslim Mindanao. President Aquino had recently issued several executive orders transferring substantial powers, functions and resources to the regional government.

105. The Government had recently created two agencies, the Office of Muslim Affairs and the Office of Northern Cultural Minorities under the Office of the President. The two agencies followed a number of basic principles in their campaign to develop and protect the rights of minority groups. They aimed to involve minority groups themselves in their own development, with due regard for their traditions, institutions and beliefs. They sought to establish a sound economic, social and political base for the development and prosperity of each cultural community. The Government and the private sector bore an equal responsibility for improving the conditions of the cultural communities,

and members of minority groups were made aware of their role as citizens of the country as a whole, with a responsibility to share their resources in the pursuit of national goals and aspirations.

106. The elaborate constitutional, legal and enforcement mechanism which had been built up in the Philippines might provide a useful model for other countries. While the Philippines had followed the debates of the Working Group with interest, it could claim to have gone a long way towards implementing the provisions of the draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities even before the declaration had been adopted. Nevertheless, his delegation fully supported the Working Group's activities, and hoped that the declaration would be adopted soon.

107. Mr. GRABOWSKI (Observer for Poland) said that the draft declaration was an important step towards a universal standard for the protection of minority groups. There were moves towards regional agreements on the same subject, such as the conclusions of the Copenhagen Meeting of the Conference on the Human Dimension of CSCE and the draft convention on the protection of minorities being prepared by the Council of Europe. However, his delegation felt that there was also a need for a universal standard, which would emphasize the indivisibility of human rights all over the world and might help to resolve tensions arising from minority issues, which were a threat to both national and international peace.

108. The completion of the draft declaration was thus an urgent task, and his delegation felt that the Working Group should try to expedite the completion of its task. Perhaps it might formulate a number of questions for Governments on the basis of its experience so far, and ask them to reply before the next meeting of the Working Group.

109. One of the Working Group's main concerns had been whether the draft declaration should lay down the rights of minority groups themselves - i.e. collective rights - or the rights of the persons belonging to those groups - i.e. individual rights. The Working Group's recent conclusion that the declaration should cover individual rights was an extremely important step forward. Experience had shown that human rights standards afforded better protection if they were applied to individuals rather than to groups, and standards applying to groups might not provide sufficient protection for every individual. It would also be difficult to appoint representatives of a particular minority group if the group concerned was scattered over a wide area, although failure to ensure adequate representation would hamper the implementation of the declaration. A standard based on individual rights did not, naturally, prevent the members taking advantage of them as a group, as the Conference on the Human Dimension of the CSCE had made clear.

110. Fears were often expressed that measures to protect the members of minority groups would be abused, with adverse effects on the life of the community as a whole. The usual solution proposed was to foster loyalty towards their country among members of minority groups. However, such loyalty was very difficult to define in legal terms. It might be more useful to adopt the principle that measures to protect minorities must not entail any limitation of the duties imposed on all citizens.

The meeting rose at 12.05 a.m.